Special Civil Application No 2541 of 1988

Date of decision: 15/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

MANMOHANDASJI SHYAMSUNDARDASJI vs STATE OF GUJARAT & ANR.

Appearance:
Shri N.K. Pahwa, Advocate, for Shri P.M. Thakkar,
Senior Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 25th January 1988 in Appeal No. Bhavnagar-14 of 1986 is under challenge in this petition under art. 226 of the Constitution of India. By the impugned order, the appellate authority dismissed the petitioner's appeal against the order passed by the Competent Authority at Bhavnagar (respondent No. 2 herein) on 27th June 1986 declaring the petitioner's holding to be surplus by 1081.67 square meters for the purposes of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief).

2. The facts giving rise to this petition move in a narrow

compass. The petitioner appears to be in occupation and possession of certain parcels of land within the urban agglomeration of Bhavnagar. According to him, the properties were used for religious purposes and that a trust has come to be registered on 8th April 1988 and the properties are shown to be trust properties in the public trust records. On coming into force of the Act, the petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. It was processed by respondent No. 2. After observing all necessary formalities under sec. 8 of the Act, by his order passed on 27th June 1986, respondent No. 2 declared the holding of the petitioner to be in excess of the ceiling limit by 1081.67 square meters. The aggrieved petitioner carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Bhavnagar-14 of 1986. By the order passed on 25th January 1988 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure A to this petition. Pursuant thereto, the necessary notification was published under sec. 10(3) of the Act and thereafter a notice under sec. 10(5) thereof came to be issued on 8th April 1988 calling upon the petitioner to hand over possession of the excess land. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition and the consequential notice at Annexure B to this petition.

3. It transpires from the appellate order at Annexure A to this petition that there are some constructed properties in the disputed land like a residential house, a kitchen house, temples of Hanuman, Mahadev, Radhakrishan and other deities. Relying on the binding ruling of the Supreme Court in the case of Smt. Meera Gupta. v. State of West Bengal and others reported in AIR 1992 SC 1567, learned Advocate Shri Pahwa appearing for the petitioner submits that all these constructed properties should be excluded from the holding of the petitioner. If that be done, runs his submission, the holding of the petitioner would be well within the ceiling limit prescribed for the urban agglomeration of Bhavnagar. As against this, learned Assistant Government Pleader Shri Pael for the respondents, submits that there is nothing on record to show as to whether or not construction of all these properties was authorised and they were in existence prior to coming into force of the Act and the area thereof together with the land appurtenant thereto. In that view of the matter, it will not be possible for this Court to decide whether or not any property is to be excluded from the petitioner's holding and, if it is do be done, to what extent it can be done.

4. It is true that, if constructed properties were in

existence prior to coming into force of the Act and if such construction is authorised, they will have to be excluded from the holding of the land-holder in view of the aforesaid binding ruling of the Supreme Court. There is no material on record with respect to the area of construction and whether such construction was authorised. In that view of the matter, the matter will have to be remanded to respondent No. 2 for the purpose of ascertaining whether or not the construction was authorised and the area of construction. Since the declaration would be with respect to the holding of the petitioner on the date of coming into force of the Act, existence of such construction, if shown in the declaration, prior to coming into force of the Act will have to be presumed.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition will have to be quashed and set aside. Since the order passed by respondent No. 2 under sec. 8(4) of the Act has merged into the appellate order, his order would also stand automatically set aside. Since the petitioner has approached this Court within a reasonable time and since during the intervening period the proceedings under sec. 10 of the Act have been undertaken culminating into the notice under sec. 10(5) thereof at Annexure B to this petition, all proceedings subsequent to the stage of sec. 8(4) thereof will have to be quashed and set aside. The matter will have to be remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It would be open to the petitioner to canvass the plea based on sec. 19(1)(iv) of the Act with respect to his holding declared under sec. 6(1) of the Act.

6. In the result, this petition is accepted. The order passed by the Urban Land Tribunal at Ahmedabad on 25th January 1988 in Appeal No. Bhavnagar-14 of 1986 affirming the order passed by the Competent Authority at Bhavnagar (respondent No. 2) on 27th June 1986 declaring the holding of the petitioner to be in excess of the ceiling limit by 1081.67 square meters is quashed and set aside. Consequently, all the proceedings under sec. 8(4) of the Act including the notice at Annexure B to this petition are also quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.